STATE OF MICHIGAN

COURT OF APPEALS

RONALD G. SWEATT, Plaintiff-Appellee, v DEPARTMENT OF CORRECTIONS, Defendant-Appellant.	FOR PUBLICATION September 25, 2001 9:10 a.m. No. 226194 WCAC LC No. 99-000026 Updated Copy December 7, 2001

Before: Griffin, P.J., and Neff and White, JJ.

NEFF, J.

In this worker's compensation case, we must decide whether a provision of the statutory scheme governing the operation of defendant Department of Corrections (DOC), MCL 791.205a, relieves defendant of its responsibility as an employer to pay disability benefits to plaintiff under the Worker's Disability Compensation Act (WDCA), MCL 418.101 *et seq.* I conclude that defendant is not relieved of its responsibility to pay benefits under the WDCA and so affirm the majority decision of the Worker's Compensation Appellate Commission (WCAC), affirming en banc the magistrate's open award of benefits, although for reasons different from those relied on by the WCAC.

I

The facts concerning plaintiff's injury and disability are uncontroverted. Plaintiff was working as a corrections officer and was injured while attempting to physically separate and restrain inmates involved in a fight. The injury required that surgery be performed on his right knee. At the time of the trial of this matter, November 18, 1998, the parties stipulated that plaintiff continued to be disabled as a result of the work-related injury incurred on December 8, 1989.

At the time of plaintiff's injury, defendant maintained a policy that precluded a return to work of any employee who was not one hundred percent fit for duty as a corrections officer. In

other words, there was no light duty or "favored work"[1] available for injured corrections officers who were not fully recovered from their injuries.

Worker's compensation benefits were voluntarily paid until January 12, 1995, when plaintiff was incarcerated as a result of a drug conviction. On the authority of MCL 418.361(1), payment of benefits was suspended while plaintiff was incarcerated. At about the same time, defendant rescinded its one hundred percent fit-for-duty policy and began to offer light duty or favored work to injured corrections officers who were not fully fit to return to work as corrections officers. Plaintiff was never offered work by defendant after this change in policy.

During his incarceration and after his parole on June 1, 1996, plaintiff worked at various jobs that accommodated his injury-related limitations on stair climbing, standing, and lifting. All indications in the record suggest that plaintiff was a willing and able worker within his limitations. When plaintiff was released from prison, the statutory prohibition of § 361 no longer applied, that is, under the WDCA plaintiff was again entitled to disability benefits.

Effective March 25, 1996, the Legislature amended the DOC statute to prohibit defendant from hiring felons. MCL 791.205a. The statute specifically provides:

> (1) Beginning on the effective date of this section, an individual who has been convicted of a felony, or who is subject to any pending felony charges, shall not be employed by or appointed to a position in the department.
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> * * *
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> (3) This section does not apply to a person employed by or appointed to a position in the department before the effective date of this section.

Plaintiff's petition for reinstatement of benefits, after the § 361 bar was lifted on his release from prison, was denied by defendant on the basis of the DOC statutory amendment, and the petition went to trial before the magistrate, who granted an open award of benefits on the basis of an ongoing right knee disability.

Defendant appealed to the WCAC, which heard the matter en banc and remanded it to the magistrate for an additional finding of fact concerning an offer of reasonable employment. The magistrate filed an opinion on remand, and the case returned to the WCAC, where defendant claimed that it should be relieved from further worker's compensation liability because of plaintiff's criminal conduct. A four-member majority of the WCAC, sitting again en banc, disagreed with defendant and affirmed the magistrate's award. Defendant appeals the decision of the WCAC by leave granted.

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[1] In 1981, the Legislature codified the judicially created favored work doctrine. *McJunkin v Cellasto Plastic Corp*, 461 Mich 590, 595; 608 NW2d 57 (2000). See 1981 PA 199, 1981 PA 200. Favored work is more properly referenced as "reasonable employment" under the statute, MCL 418.301(5)(a). *Perez v Keeler Brass Co*, 461 Mich 602, 604; 608 NW2d 45 (2000).

II

Where facts are not in dispute and statutory construction is the only question for appellate review, the standard of review is de novo. *Ramon Perez v Keeler Brass Co*, 461 Mich 602, 608; 608 NW2d 45 (2000).

III

Recent decisions of our Supreme Court acknowledge that permanent forfeiture of disability benefits payable under the WDCA is contrary to legislative intent where the statutory provision at issue references a "period" of time. For instance, where an employee refuses an offer of reasonable employment, the WDCA operates to suspend disability benefits, MCL 418.301(5)(a):

> If an employee receives a bona fide offer of reasonable employment from the previous employer, another employer, or through the Michigan employment security commission and the employee refuses that employment without good and reasonable cause, the employee shall be considered to have voluntarily removed himself or herself from the work force and is no longer entitled to any wage loss benefits under this act during the period of such refusal.

Benefits may be suspended only during the period of refusal. *Russell v Whirlpool Financial Corp*, 461 Mich 579, 586-587; 608 NW2d 52 (2000). At the point the employee ends the refusal, benefits must be reinstated. *Id*. at 587-588. This is so even if the employee is terminated for "just cause," but has been employed in favored work for less than one hundred weeks. *Id.* at 581, 586. Likewise, where the employee ends a period of unreasonable refusal of reasonable employment, and the employer reneges on its earlier offer of reasonable work, disability benefits must be reinstated. *McJunkin v Cellasto Plastic Corp*, 461 Mich 590, 592, 599-600; 608 NW2d 57 (2000). As pointed out in *McJunkin*, the WDCA does not provide for *permanent* forfeiture of benefits as a result of unreasonably refusing an offer of reasonable employment. *Id*. at 598; see also *Ramon Perez, supra* at 611.

In *Russell*, *McJunkin*, and *Ramon Perez*, the Supreme Court determined that the statutory language "during the period of such refusal" indicated a time of limited duration, reflecting a temporary suspension of benefits, which the employee could end at any time in the future. *Ramon Perez, supra* at 613-614; *McJunkin, supra* at 597-598; *Russell, supra* at 587-588. The Supreme Court emphasized that in determining whether benefits forfeited by a refusal to accept reasonable employment are to be reinstated, the focus is on the actions of the employee, as evidenced by the language in subsection 301(5)(a). *Ramon Perez, supra* at 613-614; *McJunkin, supra* at 597; *Russell, supra* at 587-588. While those three cases interpreted a section of the WDCA different than the one at issue here, their reasoning is instructive and applicable to the issues in this case.

A

The WDCA provides for suspension of disability benefits when the employee is unable to obtain or perform work because of imprisonment or commission of a crime:

> [A]n employer shall not be liable for compensation under section 351, 371(1), or this subsection for such periods of time that the employee is unable to obtain or perform work because of imprisonment or commission of a crime. [MCL 418.361(1).]

There is no provision in § 361 or elsewhere in the WDCA for the permanent forfeiture of benefits because of imprisonment or commission of a crime, and plaintiff in this case cannot be said to be unable to obtain or perform work for these reasons.[2] As pointed out by the WCAC majority opinion, "plaintiff did not refuse employment, nor can his actions in committing a crime be viewed generally as a decision to withdraw from the workplace for those periods after he had served the appropriate amount of time in prison as punishment for his criminal misconduct." In other words, it was plaintiff's behavior that led to the suspension of his benefits, but plaintiff did everything necessary under the WDCA to restore his entitlement to benefits. Therefore, focusing on the conduct of plaintiff, and the statutory language referencing a period of limited duration, as *Russell, McJunkin,* and *Ramon Perez* instruct, it is clear that under the WDCA plaintiff is entitled to reinstatement of disability payments on the basis of his continued disability.

I assume solely for purposes of analysis that MCL 791.205a prevents defendant from hiring plaintiff,[3] without reference to the availability within defendant of reasonable employment or the resumption of disability payments where there is no available reasonable employment: in other words, without reference to or recognition of the provisions of the WDCA. The argument is that the DOC statute operates to render reasonable employment unavailable to plaintiff, again, without reference to the WDCA.[4] Defendant would apply this statutory provision to permanently deprive plaintiff of benefits otherwise payable under the WDCA. The WCAC disagreed, as do I, although for different reasons.

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[2] In addition to his employment during incarceration and parole, plaintiff was employed at the time of the hearing on his petition for reinstatement of disability benefits, but was earning less than his preinjury wage. He had performed light factory work and had delivered newspapers until he could no longer do so within his physical limitations.

[3] The parties seem to agree, and the WCAC specifically found, that after his injury plaintiff was no longer employed by defendant, and thus, MCL 791.205a(3) does not come into play. However, I would question this result in light of the fact that plaintiff's injury stems from employment that predates the effective date of MCL 791.205a, and subsection 5a(3) provides that the DOC statute "does not apply to a person employed by [defendant] before the effective date of this section."

[4] It is worth noting that if defendant's earlier policy of precluding return to duty of any injured corrections officer who was not one hundred percent fit for duty had remained in effect, i.e., no reasonable employment could be offered to any injured employee who could not return to full duty, plaintiff would have been entitled to resumption of disability benefits because of his continuing disability notwithstanding the provisions of MCL 791.205a(1).

B

The WCAC decided this case on the narrow factual ground that defendant failed to prove that it would have offered plaintiff reasonable employment but for the statutory bar of MCL 791.205a(1). The WCAC accurately characterizes the record below: defendant presented the testimony of its return-to-work specialist, who explained the criteria for finding reasonable employment for injured corrections officers who could not return to full duty. The specialist testified that she did not make an offer of reasonable employment to plaintiff and did not know of any other offer to him from the department. However, subsection 301(5)(a), which suspends benefits for unreasonable refusal to accept reasonable employment, by its express language, comes into play only "*[i]f* an employee *receives* a bona fide offer of reasonable employment . . . ." (Emphasis added.) There is no statutory basis for considering defendant's reason *for failing to offer* reasonable employment. Because the WCAC's decision is premised on a finding that plaintiff *did not receive* an offer of reasonable employment, subsection 301(5)(a) is inapplicable.

While the WCAC's reasoning is based on an accurate reading of the record, I find it does not address the question that is presented by and really at the heart of this case. That is, does the provision of the DOC statute barring the department from hiring anyone convicted of a felony or subject to pending felony charges, serve to relieve the department of its responsibility to pay disability benefits under the WDCA and to thereby nullify the clear legislative intent of the WDCA to eschew permanent forfeiture of disability benefits. This is a question of law, and I conclude that defendant is not relieved of its responsibility to pay benefits. Thus, I reach the same result reached by the WCAC, but for different reasons. *Zimmerman v Owens*, 221 Mich App 259, 264; 561 NW2d 475 (1997).

C

The primary goal of judicial interpretation of a statute is to ascertain and give effect to the intent of the Legislature. *Frankenmuth Mut Ins Co v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1998). "'[N]othing will be read into a statute that is not within the manifest intent of the Legislature as gathered from the act itself.'" *McJunkin, supra* at 598, quoting *In re S R*, 229 Mich App 310, 314; 581 NW2d 291 (1998). When faced with questions of statutory construction, this Court's task is to give effect to the Legislature's intent. *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 159; 615 NW2d 702 (2000). However, where the plain and ordinary meaning of the language is clear, judicial construction is normally neither required nor permitted. *Cherry Growers, Inc v Agricultural Marketing & Bargaining Bd*, 240 Mich App 153, 166; 610 NW2d 613 (2000).

The WDCA provides for suspension of disability benefits "for such periods of time that the employee is unable to obtain or perform work because of imprisonment or commission of a crime." MCL 418.361(1). Under the express language of subsection 361(1), plaintiff 's disability benefits are suspended only during the period that he is "unable to obtain or perform work . . . ." When plaintiff sought reinstatement of his benefits following his release from incarceration, he could work, and had, in fact, been working within his limitations.

Plaintiff remains disabled, he is no longer disqualified from receiving benefits by reason of § 361, and there was no offer of reasonable employment to bring the provisions of subsection 301(5)(a) into consideration. He is entitled to benefits under the WDCA.

IV

The dissent, *post* at ___, reasons that no benefits are owed "[b]ecause, *as a matter of law*, plaintiff is unable to work for defendant because of his commission of a felony, MCL 791.205a" under the plain language of subsection 361(1). Even if the DOC statute applied to bar plaintiff's employment with defendant, I could not concur with this result. There is no basis in subsection 361(1) for such specific application to defendant, and I will not read such language into the statute. See *McJunkin, supra* at 598. The fact that *defendant* cannot rehire plaintiff does not render plaintiff ineligible for benefits under the language of subsection 361(1). The test is not whether an employee is unable to work for the previous employer, but rather merely whether "the employee *is unable to obtain or perform work* because of . . . commission of a crime." The record is clear that plaintiff is not unable to obtain or perform work for that reason.

My colleague's lengthy dissent for reversal gets the underlying legal principles right, but the analysis is fatally flawed. The foundation of the dissent's reasoning is an unsupported premise that the DOC statute and the worker's compensation act are interrelated statutes and therefore must be read in pari materia. The requirements for applying the principle of in pari materia are not met because the DOC statute and the worker's compensation act do not "'relate to the same person or thing, or the same class of persons or things, or . . . have a common purpose.'" *State Treasurer v Schuster*, 456 Mich 408, 417; 572 NW2d 628 (1998), quoting *Detroit v Michigan Bell Telephone Co*, 374 Mich 543, 558; 132 NW2d 660 (1965).

The worker's compensation act is a self-contained legislative scheme. *Perez v State Farm Mut Automobile Ins Co*, 418 Mich 634, 649; 344 NW2d 773 (1984). The purpose of the worker's compensation act is to compensate a claimant for lost earning capacity caused by a work-related injury, under a comprehensive scheme that balances the employer's and the employee's interests. *Eversman v Concrete Cutting & Breaking*, 463 Mich 86, 92-93; 614 NW2d 862 (2000); *Ramon Perez, supra* at 610-611; *Mattison v Pontiac Osteopathic Hosp*, 242 Mich App 664, 672; 620 NW2d 313 (2000). An injured employee is eligible for compensation regardless of whether the employer was at fault, and, in return, the employer is immunized from tort liability. *Eversman, supra; Simkins v General Motors Corp (After Remand)*, 453 Mich 703, 711; 556 NW2d 839 (1996). The DOC statute is an unrelated act governing the establishment and operation of the corrections department. MCL 791.201. The purpose of MCL 791.205a, enacted in 1996, is to promote security in the prisons by prohibiting the DOC from hiring convicted felons. 1996 PA 140; House Legislative Analysis, HB 4398, October 10, 1996.[5] It regulates the prisons and

[5] According to the bill analysis, the problem addressed by this statute is the high number of corrections officers who have records of felony convictions: of ninety individuals with felony convictions employed by the DOC, sixty are corrections officers. Those advocating the statutory amendment believed this number to be too high. House Legislative Analysis, HB 4398, October 10, 1996.

prison employees. These statutes are wholly unrelated, and there is no basis for reading them in pari materia.

Further, in my view, the legislative history cited by the dissent supports affirmance of the appellate commission's decision, not reversal. Clearly, the legislative intent was to bar compensation in those situations where the claimant was removed from the work force, which does not apply to plaintiff because he reentered the work force following his release from incarceration. I cannot agree that plaintiff is subject to a permanent deprivation of compensation for a temporary removal from the workforce, which would be contrary to the Supreme Court's recent explicit pronouncements that the worker's compensation act does not favor a permanent forfeiture of benefits. *Ramon Perez, supra* at 611; *McJunkin, supra* at 598. In *Ramon Perez, supra* at 614, the Supreme Court recognized that, after an injury, "reasonable employment" job offers may come from various sources, and "[t]he fact that one particular job disappears says nothing about the employee's decision to withdraw from the work force."

The dissent's concern that this decision allows, by extension, an imprisoned individual to collect worker's compensation if the individual is able to obtain employment during incarceration, i.e., work release, is unfounded. This speculation is far beyond the context of this case, and I reject the dissent's initial assumption that a prisoner who participates in work release is necessarily able to obtain or perform work within the statutory definition, thus avoiding the bar of subsection 361(1).

By enacting subsection 361(1), Michigan joined a minority of other states that disallowed worker's compensation benefits to incarcerated claimants. Anno: *Workers' compensation: Incarceration as terminating benefits*, 54 ALR4th 241, § 2[a]. My search disclosed no authority discussing statutory language in other states comparable to that at issue here, i.e., disallowing benefits where a claimant is unable to obtain or perform work because of commission of a crime. The dissent, *post* at ___, concludes that my decision renders the "commission of a crime" language a nullity because no person convicted of a crime would be prevented "from obtaining work from *all* employers." In fact, the "commission of a crime" language has apparently been applied to unique circumstances where a worker pleaded guilty of a crime, but fled the jurisdiction before sentencing. The claimant's attorney argued that the claimant was not barred from benefits under subsection 361(1) because the claimant had not been imprisoned. The WCAC held that the claimant was presently unable to obtain or perform work within the meaning and intent of subsection 361(1). Welch, Worker's Compensation in Michigan: Law & Practice (4th ed), § 10.3, p 10-4, citing *Tanney v Advance Sheet Metal, Inc*, 1992 Mich ACO 14; 4 MIWCLR 1287 (1992). This circumstance alone, albeit narrow, justifies the "commission of a crime" language.

The dissent, *post* at ___, asserts that the statutory language is intended to deny benefits in plaintiff's case because the causal connection between his original work injury and defendant's liability has been broken, as in situations involving "discharge for good cause, voluntary

retirement, or accident or illness unrelated to the worker's disability."[6] I find no authority supporting this view, and the dissent cites none.

Finally, the interpretation of the dissent, favoring defendant, is not in keeping with the underlying policies of the WDCA. "[T]he act was designed to be remedial and must not be unnecessarily construed so as to favor a denial of benefits. *Nederhood v Cadillac Malleable Iron Co*, 445 Mich 234, 247; 518 NW2d 390 (1994) (opinion by Brickley, J). With all due respect, I find the dissent's reasoning and conclusions unpersuasive.

V

Even were I to find judicial construction of the statutory language in subsection 361(1) necessary, I am constrained to reach the same conclusion as above. The rules of statutory interpretation require that provisions be read in the context of the entire statute so as to produce an harmonious whole. *Weems v Chrysler Corp*, 448 Mich 679, 699-700; 533 NW2d 287 (1995). The Legislature's 1981 amendment of the worker's compensation statute, see 1981 PA 199, 1981 PA 200, gives defendant the benefit of mitigation of its compensation liability through any employment source: plaintiff is obligated to accept an offer of reasonable employment from defendant, another employer, or the Michigan Employment Security Commission. MCL 418.301(5)(a); *McJunkin, supra* at 595-596. It follows that the Legislature similarly intended that compensation be suspended where a claimant could not obtain or perform work from any source, as expressed by the broad language "unable to obtain or perform work" because of the commission of a crime. The inclusion of the phrase "to obtain . . . work" belies any legislative intent that subsection 361(1) hinges merely on a return to employment with the previous employer.

Affirmed.

/s/ Janet T. Neff

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[6] In fact, worker's compensation benefits are not necessarily denied in these situations. See, e.g., *Russell, supra* at 588-589 (benefit availability continues even where an employee discharged for just cause has been employed pursuant to subsection 301[5] for less than one hundred weeks).